

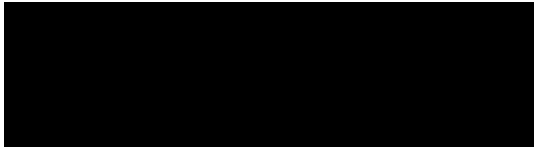
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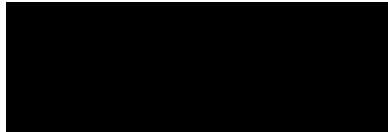


**U.S. Citizenship
and Immigration
Services**



FILE: LIN 03 265 50925 Office: NEBRASKA SERVICE CENTER Date: **APR 09 2004**

IN RE: Petitioner:
Beneficiary:

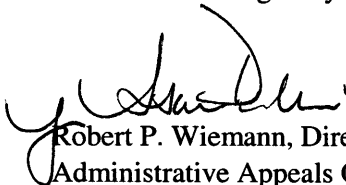


PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) (i) (b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i) (b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.



Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an individual who seeks to employ the beneficiary as a home-based private teacher. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, the petitioner submits additional documentation with regard to teacher licensing by the State of Illinois.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's letter, dated, September 17, 2003, that responds to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a home-based special education teacher. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail: working with a child suffering from a mild form of

disability by modifying the general education curriculum to meet the child's individual needs and in accordance with child's current abilities. In its response to the director's request for further evidence, the petitioner stated that the beneficiary would work one-on-one with the petitioner's infant daughter in teaching and developmental activities for 80 per cent of her work hours; would do developmental activities in a family or a peer group setting for 15 per cent of her time; and general child care for 5 per cent of her work hours.

The director found that the proffered position of home-based private teacher was not a specialty occupation since the documentation submitted by the petitioner did not indicate that the State of Illinois required a baccalaureate degree or other certifications to perform the duties of the proffered position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner submits a brief and additional documentation on the teaching certification process for the State of Illinois.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. In the original petition, the petitioner described the duties of the proffered position in generic terms, and placed emphasis on the beneficiary being able to speak either Polish or Russian. On appeal, the petitioner submitted an additional list of six duties particular to special education teaching beyond the basic teaching skills required of elementary school teachers.

With regard to training and other qualifications for special education teachers, on page 204, the *Handbook* is very clear with regard to training and qualifications for special education teachers. According to the *Handbook*, all states require a bachelor's degree and completion of an approved teacher preparation program with a prescribed number of subject and education credits and supervised practice teaching. Many states require special education teachers to obtain a master's degree in special education, involving at least one year of additional coursework, including a specialization, beyond the bachelor's degree. In addition, all States and the District of Columbia require special education teachers to be licensed. The *Handbook* does not explicitly examine the qualifications or training for a home-based special education teacher; however, it would appear that such an occupation would require similar qualifications.

What is less clear in this proceeding is whether the proffered position as described by the petitioner is analogous to a special education teacher in the public or private school system. The critical element in examining whether the proffered position is a specialty occupation is not the title of the position or an

employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. With regard to the instant petition, the petitioner is clear as to the duties to be performed by her child's in-home instructor. On appeal, the petitioner states that the duties to be performed by the beneficiary are very similar to those of an elementary school special education teacher. The petitioner also stated that she wanted to hire a private teacher who was also fluent in Polish or Russian. However, the petitioner did not indicate that the position required a baccalaureate degree in a specific specialty for entry into the position.

The petitioner's stated qualifications are quite distinct from the academic qualifications for all fifty States and the District of Columbia. The petitioner does not require that the beneficiary be certified to teach, or have a coursework in teaching with specific coursework in special education. With regard to the petitioner's assertion as to whether private teachers in Illinois require certification by the State, the petitioner provided no documentary evidence to substantiate her assertion that the State of Illinois does not require certification for home-based teachers. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, the petitioner's assertion does not establish that home-based special education teachers, as opposed to parents involved in home schooling, are not required to be certified. Without more persuasive evidence, the petitioner has not established that the proffered position in fact is a specialty occupation that requires a baccalaureate degree in a specific specialty for entry into the position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation regarding academic credentials required for other home-based elementary school-level special education teachers. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. In her explanation for the submission of the I-129 petition, the petitioner explained that the proffered position is in response to her daughter's learning disability needs. There is no information in the record that indicates the petitioner has hired any other individuals as private special education teachers for her child. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in special education. For example, the additional duties listed by the petitioner on appeal appear to be quite generic. Of the six duties that the petitioner lists as beyond basic teaching skills, and specific to the training of a child with special education needs, five of the duties could be applicable to the duties of any elementary school teacher. The duty identified by the petitioner that involves understanding the impact that disabilities have on the cognitive, physical, emotional, social and communication development of the child does suggest some specialization of knowledge; however, even this job duty would appear to be standard training for elementary school teachers. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position, if the position had been determined to be a specialty occupation. The petitioner submitted an educational equivalency document that established that the beneficiary's foreign degrees in mathematics were the equivalent of a U.S. Master's degree in applied mathematics from an accredited U.S. educational institution. While the petitioner submitted certificates for 120 hours of coursework in special education that the beneficiary had attended, there is no breakdown or further information on the actual courses taken, and their equivalency to any required coursework in special education for U.S. teachers. If the petitioner intended to establish this educational equivalency based on both the beneficiary's educational and professional work experience, the documentary evidence in the record is insufficient to establish the regulatory criteria with regard to this issue. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.